

Message Text

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21

ORIGIN OPIC-06

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DRAFTED BY OPIC/GC: LLUCERO

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OPIC/GC:PRGILBERT

EB/IFD/OIA:DHSTEBBING

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FM SECSTATE WASHDC

TO AMEMBASSY NEW DELHI

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E. O. 11652: N/A

TAGS: EFIN

SUBJECT: OPIC CONTRACT OF GUARANTY NO. 1396-MCNALLY PITTSBURG
MANUFACTURING CORP. (MCNALLY)

REF: STATE 71022

1. OPIC IS REQUIRED PURSUANT TO SUBJECT CONTRACT TO PROCESS CLAIM
FILED BY MCNALLY AS INDICATED PARA 1 REFTEL WITHIN SPECIFIC TIME
PERIOD WHICH EXPIRES APRIL 20, 1975.

2. OPIC CANNOT MAKE FINAL DETERMINATION OF MCNALLY'S CLAIM UNTIL
OPIC RECEIVEDS SATISFACTORY EVIDENCE THAT CLAIM IS BASED ON VALID
EXCHANGE CONTROLS. IF, HOWEVER, CONVERTIBILITY PROBLEM IS CAUSED
BY MCNALLY'S DIFFICULTIES CONVERNING DILUTION OF EQUITY, AN
INCONVERTIBILITY CLAIM MAY NOT BE APPROPRIATE UNDER SUBJECT CON-
TRACT.

3. MCNALLY ASSERTS THAT DELAY BY THE RESERVE BANK IS NOT DUE TO
DILUTION OF EQUITY DIFFICULTIES AND THAT THE RESERVE BANK HAS NOT
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GIVEN MCNALLY ANY REASON FOR DELAY. IF BY APRIL 20, 1975 EMBASSY
CANNOT PROVIDE OPIC WITH EVIDENCE THAT MCNALLY CONVERTIBILITY PRO-
BLEM IS CAUSED BY DILUTION OF EQUITY DIFFICULTIES, OPIC LIKELY
WILL BE REQUIRED TO MAKE PAYMENT TO MCNALLY.

4. MCNALLY FURTHER ASSERTS THAT MCNALLY BHARAT ENGINEERING COMPANY, LTD. ("MCNALLY BHARAT") HAS COMPLIED WITH RECOGNIZED PROCEDURE FOR APPLICATION FOR TRANSFER TO THE RESERVE BANK OF INDIA BY DOING THE FOLLOWING:

A. AFTER DIVIDEND DULY DECLARED ON MARCH 24, 1974, DIVIDEND WARRANT NO. 012 FOR 497,011 RUPEES WAS DEPOSITED ON APRIL 16, 1974 WITH ITS BANK IN CALCUTTA, NATIONAL & GRINDLAYS BANK, LTD. ("NATIONAL & GRINDLAYS"), WHICH WAS REQUESTED BY MCNALLY BHARAT TO TRANSFER SAID RUPEES INTO U.S. DOLLARS TO MCNALLY'S ACCOUNT IN NEW YORK BANK. NATIONAL & GRINDLAYS FILED APPLICATION FOR TRANSFER LATTER PART OF APRIL WITH THE RESERVE BANK OF INDIA BRANCH IN CALCUTTA.

MCNALLY BHARAT ALSO FOLLOWED UP ON ABOVE BY MAKING NUMEROUS INQUIRIES THROUGH NATIONAL & GRINDLAYS TO THE CALCUTTA RESERVE BANK BRANCH AS TO STATUS OF APPLICATION FOR TRANSFER OF DIVIDEND.

SINCE MCNALLY IS REQUIRED UNDER CONTRACT TO TAKE ALL REASONABLE STEPS REQUIRED TO EFFECT TRANSFER UNDER GOI LAWS, DECREES, REGULATIONS, OR ADMINISTRATIVE DETERMINATIONS, OPIC WOULD APPRECIATE EMBASSY CONFIRMATION WITH REGARD TO ABOVE. OPIC WOULD FURTHER APPRECIATE EMBASSY ADVICE AS TO WHETHER MCNALLY SHOULD REASONABLY TAKE ANY OTHER STEPS TO ATTEMPT TO CAUSE TRANSFER TO BE MADE.

5. IF CLAIM IS PAID, OPIC, IN ADDITION TO ALTERNATIVE INDICATED IN PARA 5 REFTTEL, IS ALSO CONSIDERING POSSIBILITY OF TAKING AN ASSIGNMENT OF MCNALLY'S BENEFICIAL INTEREST TO DIVIDEND BUT REQUIRING MCNALLY TO PURSUE ON OPIC'S BEHALF APPLICATION FOR TRANSFER WITH RESERVE BANK. UPON RECEIPT OF DIVIDEND IN DOLLARS, MCNALLY WOULD BE REQUIRED TO TRANSFER SUCH DOLLARS TO OPIC.

6. OPIC WOULD APPRECIATE EMBASSY'S COMMENT AND SUGGESTIONS, IF ANY, AS TO WHICH OF FOLLOWING ALTERNATIVES WOULD BE MOST FEASIBLE AND WOULD MOST LIKELY RESULT IN OPIC PROMPTLY REALIZING LIMITED OFFICIAL USE
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DOLLARS ON DIVIDEND APPLICATION:

A) OPIC TAKING A COMPLETE ASSIGNMENT OF MCNALLY'S RIGHTS TO RECEIVE PAYMENT OF DIVIDEND, AND THEN OPIC ITSELF PURSUING THE APPLICATION FOR TRANSFER WITH THE RESERVE BANK; OR

B) OPIC TAKING ONLY AN ASSIGNMENT OF A BENEFICIAL INTEREST IN MCNALLY'S RIGHT TO DIVIDEND AND REQUIRING MCNALLY TO PURSUE THE APPLICATION FOR TRANSFER OF DIVIDEND WITH RESERVE BANK.
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<< END OF DOCUMENT >>

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